

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

Bail Appl..No. 5197 of 2007()

CRIME NO.27/06 OF EXCISE RANGE, VARAPPUZHA
.....

: PETITIONER/ACCUSED

RAJEEV P.R., S/O. RAJAN,
KEERIKKAPPILLY HOUSE, EZHIKKARA, NORTH PARAVUR.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 05/09/2007, THE COURT ON 04/09/2007 PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.5197 of 2007

Dated this the 5th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The crux of the allegations against him is that he was found vending Indian Made Foreign Liquor without any legal authority on 20.10.06 at about 11 p.m. He was allegedly carrying on the illicit activity in a scooter which was used by him. 4.31 litres of Indian Made Foreign Liquor was allegedly seized. On seeing the excise party, the petitioner allegedly took to his heels and could not be arrested. The vehicle and the contraband article were abandoned at the scene of the crime and the petitioner had allegedly run away. Seizure was effected. In the seizure mahazar as well as in the occurrence report, the name of the petitioner is clearly shown. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He had nothing to do with the alleged activity of illicit sale of Indian Made Foreign Liquor. His sister's vehicle was parked outside her house and that was allegedly

found missing. He had not used the said vehicle. He had not carried on illicit sale of Indian Made Foreign Liquor. He had not run away from the scene. In these circumstances, it is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate and he must then seek regular bail in the ordinary course, submits the learned Public Prosecutor .

4. I have considered all the relevant inputs. Powers under Section 438 Cr.P.C are to be invoked sparingly and in exceptional cases that too in aid of justice. Such discretion cannot, of course, be invoked as a matter of course. When the Court is satisfied that the powers of arrest are about to be misused or abused, such powers under Section 438 Cr.P.C can be invoked.

5. Having rendered my anxious consideration to all the relevant inputs in this case, I am unable to find any features which would justify or warrant the invocation of the discretion under Section

438 Cr.P.C. This, I agree with the learned Public Prosecutor , is an eminently fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and seek bail in the ordinary course.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-

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PA To Judge